

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL GENE MAYVILLE,

Plaintiff,

v.

KYLE DEMERS, RYAN HINTZ, JOHN
NICKLE, EMMANUEL METAYER,

Defendants.

ORDER

19-cv-351-bbc

Pro se plaintiff and prisoner Michael Gene Mayville is proceeding on Eighth Amendment claims that prison staff at Waupun Correctional Institution violated his rights by forcing him to interact with a psychiatrist who sexually harassed him and then by failing to protect him from harming himself afterward. (I have amended the caption to reflect the correct spelling of defendants' names.) Defendant Emmanuel Metayer has filed a motion to dismiss for failure to state a claim upon which relief may be granted. Dkt. #16 (citing Fed. R. Civ. P. 12(b)(6)). Defendants Kyle Demers, Ryan Hitz and John Nickel (the state defendants) have filed a motion to dismiss or transfer the case to the Eastern District of Wisconsin on the ground that all of the parties reside in the Eastern District and plaintiff's allegations concern events that took place in the Eastern District. Dkt. #21 (citing 28 U.S.C. § 1406(a) ("The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.")). After filing a motion for

extension of time to file his responses, plaintiff filed briefs stating that he does not oppose the motion to transfer but opposes the motion to dismiss filed by Metayer. Dkt. # 29.

It is clear from the parties' submissions that venue is proper only in the Eastern District of Wisconsin. Venue is proper where defendants reside or where the events giving rise to the claim took place, both of which are the Eastern District in this case. 28 U.S.C. § 1391(b). Further, I conclude that transfer, rather than dismissal, is in the interests of justice. Accordingly, I will grant the state defendants' motion and will transfer this case to the Eastern District of Wisconsin, which can address defendant Metayer's motion.

ORDER

IT IS ORDERED that

1. Plaintiff Michael Gene Mayville's motion for extension of time to file a brief in opposition to defendants' motions to dismiss, dkt. #28, is GRANTED.

2. The motion of defendants Kyle Demers, Ryan Hitz and John Nickel to transfer this case to the Eastern District of Wisconsin, dkt. #21, is GRANTED. This case is TRANSFERRED to the United States District Court of the Eastern District of Wisconsin.

Entered this 24th day of February, 2020.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge